IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO.2907 OF 2004

IN

CRIMINAL APPEAL NO. 954 OF 2002

Union of India, Customs Kolhapur .. Applicant

versus

Ramkisan G. Sharma & Anr. .. Respondents

...

Mr.H.V. Mehta for the applicant.

Mr.D.P. Adsule, APP for the State.

CORAM : V.M. KANADE, J

DATED : 1st December 2004.

P.C:-

1. Heard the learned counsel appearing on behalf of the Union of India.

2. Criminal Appeal no.954 of 2002 was dismissed for default by order dated 29th November 2003. This application has been filed for restoration of the appeal which was dismissed for want of prosecution.

Criminal Application is allowed. Criminal Appeal is taken up for hearing forthwith. I have heard the learned counsel appearing on behalf of the appellant at length. He has taken me through the judgement and order passed by the trial Court. He has also taken me through the oral and documentary evidence adduced by the prosecution.

3. Criminal Appeal is directed against the order passed by the Judicial Magistrate First Class, Pen, Madgaon in RCC no.57 of 1991. By the said judgement and order dated 3rd July 2001, the learned Judicial Magistrate was pleased to acquit the accused of the offences u/s.11 punishable u/s.135(1)(b)(ii) of the Customs Act 1962 and sec.85(1)(ii)(iii) of the Gold Control Act. The prosecution case is that the accused had concealed two foreign marked gold biscuits in a yellow plastic bag which was found in his right hand side pant pocket. Accused no.2 died during the pendency of the trial. The prosecution examined six witnesses and he also relied on the statement which was made by the accused no.1 before the Enquiry Officer in which he had confessed that he had committed the said offence. In the present case, two separate proceedings were instituted against the

accused, one u/s.124 of the Bombay Police Act and the other under the Customs Act and Gold Control Act. Initially, the accused was arrested by PSI Suresh Pawar, LCB Officer, Kolhapur. The customs authorities did not inform the LCB Police station that they were going to prosecute the accused under the provisions of Customs Act and Gold Control Act.

4. The question which falls for consideration is whether the accused can be tried for the same offence twice. The record shows that the criminal case which was filed u/s.124 of the Bombay Police Act by the LCB Police was disposed of in the year 1996. The trial Court in my view has rightly come to the conclusion that it was the duty of the Customs Officers to intimate the LCB Police not to file a case under the Bombay Police Act and they intended to take action against the accused under the provisions of Customs Act and Gold Control Act and therefore, the second trial for the same offence was not maintainable.

5. The trial Court therefore rightly acquitted the accused giving him benefit of doubt. I see no reason to interfere with the said order.

6. Appeal is dismissed.

V.M.KANADE, J